

1 LATHAM & WATKINS LLP  
2 Daniel P. Brunton (Bar No. 218615)  
3 Email: daniel.brunton@lw.com  
4 12670 High Bluff Drive  
5 San Diego, CA 92130  
6 Tel.: (858) 523-5400  
7 Fax: (858) 523-5450

5 Michael G. Romey (Bar No. 137993)  
Email: michael.romeyp@lw.com  
6 355 South Grand Avenue, Suite 100  
Los Angeles, CA 90071-1560  
7 Tel.: (213) 485-1234  
Fax: (213) 891-8763

8 Janice M. Schneider (*Pro Hac Vice*)  
9 Email: janice.schneider@lw.com  
10 Devin M. O'Connor (*Pro Hac Vice*)  
11 Email: devin.o'connor@lw.com  
12 555 Eleventh Street, NW, Suite 1000  
Washington, D.C. 20004-1304  
Tel.: (202) 637-2200  
Fax: (202) 637-2201

13 Attorneys for Intervenor-Defendant  
Sable Offshore Corp.

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

# CENTER FOR BIOLOGICAL DIVERSITY, et al.,

*Plaintiffs,*

V

DOUG BURGUM, et al.,

### *Defendants,*

and

## SABLE OFFSHORE CORP.

### *Intervenor-Defendant.*

CASE NO. 2:24-cv-05459-MWC-MAA

**SUPPLEMENTAL BRIEF IN  
SUPPORT OF SABLE OFFSHORE  
CORP.'S CROSS-MOTION FOR  
SUMMARY JUDGMENT**

Judge: Hon. Michelle Williams Court  
Courtroom: 6A

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1    **I. INTRODUCTION**

2       In their First Amended Complaint (“Am. Compl.”), Plaintiffs challenged the  
3 Bureau of Safety and Environmental Enforcement’s (“BSEE”) November 2023  
4 decision to extend the amount of time for Sable Offshore Corp. (“Sable”) to  
5 resume oil and gas operations at the Santa Ynez Unit (“SYU”) (“2023 Extension”),  
6 BSEE’s use of a Categorical Exclusion (“CatEx”) for this decision, and BSEE’s  
7 continued use of prior environmental impact statements (“EIS”) for the SYU.

8       On May 29, 2025, BSEE voluntarily provided the very relief Plaintiffs seek  
9 in this lawsuit and issued a new decision re-affirming the 2023 Extension that  
10 directly responded to concerns raised by Plaintiffs in this litigation (“2025  
11 Decision”). And rather than relying on a CatEx, BSEE based this 2025 Decision  
12 on a May 28, 2025, Environmental Assessment (“EA”) and Finding of No  
13 Significant Impact (“FONSI”), which directly responded to the alleged  
14 shortcoming Plaintiffs claim in the CatEx. On July 10, 2025, this Court requested  
15 supplemental briefing to “discuss Plaintiffs’ theory of the facts as to whether  
16 BSEE’s May 2025 Decision and [EA] was completed in bad faith, was improperly  
17 predetermined, was unreasonably slanted, and/or was substantively inadequate  
18 pursuant to the relevant case law.” Dkt. 84. The cases are uniformly against  
19 Plaintiffs’ theory, and, by making the argument, Plaintiffs invite this Court to err.

20       *First*, it would be improper for the Court to reach a determination regarding  
21 the adequacy of the 2025 Decision and EA because Plaintiffs have not challenged  
22 those decisions in their Amended Complaint and there is no administrative record  
23 upon which the Court could base such a determination.

24       *Second*, the 2025 Decision and EA/FONSI are entitled to a presumption of  
25 regularity and courts also presume that government actions that moot a case are  
26 taken in good faith. Plaintiffs have failed to rebut either presumption.

1        *Third*, for mootness purposes, the relevant inquiry into the EA/FONSI and  
2 2025 Decision is whether there remains any live or ongoing controversy with  
3 respect to the claims in Plaintiffs' Amended Complaint. Because these actions  
4 directly superseded the challenged actions and responded to Plaintiffs' alleged  
5 deficiencies regarding the prior decisions, there remains no live controversy.

6 **II. ARGUMENT**

7        **A. The 2025 Decision and EA are Beyond the Scope of this Action**

8        The Court should not reach a determination that the 2025 Decision and EA  
9 were completed in bad faith, improperly predetermined, unreasonably slanted,  
10 and/or were substantively inadequate because these claims were not raised in the  
11 Amended Complaint and there is no reviewable record to support these claims.  
12 Indeed, Supreme Court and Ninth Circuit caselaw preclude such a review.

13        Plaintiffs claim "the process by which BSEE issued its 2025 Decision and  
14 Environmental Assessment was fundamentally flawed," Supp. Br. at 2, and that  
15 "[t]he 2025 Decision and [EA] are substantively inadequate," *id.* at 9. But  
16 Plaintiffs "did not plead [these] claim[s] in [their] complaint" so they are "not  
17 properly before the district court, and fail[]." *See Earth Island Inst. v. U.S. Forest*  
18 *Serv.*, 87 F.4th 1054, 1073 (9th Cir. 2023).

19        Plaintiffs invite reversible error by urging the Court to evaluate the  
20 substance of the 2025 EA, Supp. Br. at 9-12, and by citing to a BSEE press  
21 release<sup>1</sup>, arguing that it "demonstrat[es] the improperly skewed and predetermined  
22 nature of BSEE's decisionmaking," with respect to the EA, *id.* at 1-2. *See San Luis*  
23 & *Delta-Mendota Water Auth. v. Locke*, 776 F.3d 971, 993 (9th Cir. 2014)  
24 ("district court abused its discretion" by considering extra-record evidence). While  
25 these documents may be considered for mootness, both are extra-record evidence  
26 with respect to the Administrative Procedure Act ("APA") claims before the Court.  
27 The Court's review in an APA case is limited to the administrative record and

28 <sup>1</sup> The Monsell Declaration, Dkt. 85-1, is impermissible extra-record material.

1 there is no administrative record for the 2025 Decision and EA before the Court.  
2 The Court’s “review is limited to the administrative record already in existence,  
3 not some new record made initially in the reviewing court.” *San Luis & Delta-*  
4 *Mendota Water Auth. v. Jewell*, 747 F.3d 581, 602-04 (9th Cir. 2014).<sup>2</sup> That has  
5 been black-letter law for decades. *Camp v. Pitts*, 411 U.S. 138, 142-43 (1973)  
6 (same; reversible error to consider extra-record evidence “made initially in the  
7 reviewing court”). As a result, Plaintiffs’ arguments fail. *See also Gengler v. U.S.*  
8 *Through Dep’t of Def. & Navy*, 2006 WL 8458837, at \*12 (E.D. Cal. Aug. 2, 2006)  
9 (“the current state of the record (e.g., no administrative record has been filed) does  
10 not permit a determination that the facts and law clearly favor the moving party”);  
11 *The Fund for Animals v. Norton*, 390 F. Supp. 2d 12, 15 (D.D.C. 2005) (new  
12 decision “based upon a different administrative record, including a new [EA] and  
13 [FONSI], which are not before the Court in this case” must be challenged in a  
14 “new lawsuit”); *Oceana, Inc. v. Coggins*, 2021 WL 1788516, at \*5 (N.D. Cal. May  
15 5, 2021) (same).

16           **B. Plaintiffs Have Not Shown the 2025 Decision and Environmental  
17 Assessment Are “Inherently Flawed”**

18           Contrary to Plaintiffs’ arguments, Supp. Br. at 2-3, like any agency action,  
19 the 2025 Decision and EA/FONSI are entitled to a presumption of regularity. *See*  
20 *San Luis*, 776 F.3d at 994 (“[T]he agency’s action carries a presumption of  
regularity.”); *Akiak Native Cnty. v. U.S. Postal Serv.*, 213 F.3d 1140, 1146 (9th  
21 Cir. 2000); *see also Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo.*, 605  
22 U.S. \_\_\_, 145 S. Ct. 1497, 1511 (2025) (“[T]he central principle of judicial review  
23 in NEPA cases is deference.”). Moreover, “[t]he law is clear that courts cannot  
24 assume that because an agency has failed to comply with NEPA in the past, it will  
25 assume that because an agency has failed to comply with NEPA in the past, it will

26 \_\_\_\_\_  
27 <sup>2</sup> There are narrow exceptions to this general rule; however, none apply, as  
discussed *infra* Section II.B (no bad faith), and, even if they did, it does not change  
the fact that, because the 2025 Decision and EA are not being challenged in this  
action, there is no basis for the Court to consider their adequacy.

1 fail to do so in the future.” *Pac. Rivers Council v. U.S. Forest Serv.*, 942 F. Supp.  
2 2d 1014, 1023 (E.D. Cal. 2013); *see also Sierra Club v. Penfold*, 857 F.2d 1307,  
3 1319 (9th Cir. 1988) (same). Therefore, even if BSEE’s 2023 Extension and prior  
4 NEPA analysis were deficient in some aspect (which they were not), this would  
5 have no bearing on the sufficiency of the 2025 Decision and EA/FONSI or the  
6 presumption of regularity that attends them. *See United States v. Chem. Found.*,  
7 272 U.S. 1, 14-15 (1926).

8 There is also a presumption that the government acts “in good faith” when it  
9 takes an action that moots a plaintiffs’ claims. *Am. Cargo Transp., Inc. v. United*  
10 *States*, 625 F.3d 1176, 1180 (9th Cir. 2010) (in evaluating mootness, “unlike in the  
11 case of a private party, [courts] presume the government is acting in good faith”).  
12 It is “[t]he party challenging the presumption of mootness” that must show “a  
13 reasonable expectation of reenactment” that is “founded in the record. . . , rather  
14 than on speculation alone.” *Bd. of Trs. of the Glazing Health & Welfare Trust v.*  
15 *Chambers*, 941 F.3d 1195, 1199 (9th Cir. 2019). Here, there can be no “reasonable  
16 expectation” that BSEE will take a “substantially similar” action to those  
17 challenged in the Amended Complaint because BSEE has already completely  
18 redone its environmental review and issued a superseding 2025 Decision.<sup>3</sup> There  
19 is no threat that BSEE will continue to rely exclusively on CatExs and allegedly  
20 “dated” NEPA reviews for future extensions (if necessary) when an updated  
21 EA/FONSI assessing these activities already exists.<sup>4</sup>

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22  
23 <sup>3</sup> Plaintiffs argue that the approval of two Applications for Permit to Modify  
24 (“APMs”) are evidence that the 2025 Decision and EA are “inherently flawed” but  
25 ignore that those approvals were granted in September 2024, Dkt. 38-1, ¶ 9,  
months before the government filed its motion for voluntary remand or embarked  
on the new EA in December 2024. Dkt. 37. BSEE did not issue any new APMS  
during its development of the 2025 EA.

26 <sup>4</sup> Plaintiffs note that BSEE has subsequently issued nine APMS for SYU wells in  
27 July 2025. *See* Supp. Br. at n. 1. Plaintiffs do not reveal, however, that these  
APMs were not based on a CatEx but rather a “Determination of NEPA  
Adequacy” under the 2025 EA/FONSI. *See, e.g.*, APM H015 (July 3, 2025),  
28 available at <https://www.bsee.gov/sites/bsee.gov/files/2025->

1       BSEE acted well within its authority to prepare the EA/FONSI and issue the  
2 2025 Decision. Agencies routinely issue superseding decisions or conduct  
3 additional NEPA analysis when their prior actions are challenged, which renders  
4 the superseded decision and NEPA analysis moot. *See Native Vill. of Nuiqsut v.*  
5 *Bureau of Land Mgmt.*, 9 F.4th 1201, 1210 (9th Cir. 2021) (“[W]hen the  
6 environmental report at issue ‘has been superseded, and the federal agencies will  
7 rely’ on a new and different report ‘for the near future,’ the case is moot.”)  
8 (citation omitted); *Aluminum Co.*, 175 F.3d at 1163 (although agency did not  
9 prepare EIS before approving hydropower system operations, case was moot  
10 because an EIS was subsequently prepared and the court could “grant no relief that  
11 would ‘undo’ the operation of the [project] during the period between issuance of  
12 the [approval] and the final EIS”); *Defs. of Wildlife v. U.S. Army Corps of Eng’rs*,  
13 No. CV-15-14-GF-BMM, 2017 WL 1405732, at \*5 (D. Mont. Apr. 19, 2017)  
14 (“Ninth Circuit case law counsels that any claims based on the superseded [NEPA  
15 documents] now prove moot.”); *S. Utah Wilderness All. v. U.S. Dep’t of the  
16 Interior*, 250 F. Supp. 3d 1068, 1087-88 (D. Utah 2017) (challenge to applications  
17 for permit to drill (“APD”) mooted where, “[a]fter further environmental impact  
18 analysis, each of the APDs challenged by Plaintiffs will be replaced by ‘a new  
19 decision’” covering each suspended APD); *Greater Yellowstone Coal. v. Tidwell*,  
20 572 F.3d 1115, 1121 (10th Cir. 2009) (“no live controversy” where plaintiffs  
21 sought to “compel . . . environmental analyses” of elk feedgrounds and the agency  
22 “did exactly this” in subsequent NEPA analysis).

23 [07/Sable%20Offshore%20Corp%2C%20Application%20for%20Permit%20to%20](#)  
24 [Modify%207-03-2025.pdf](#). Since the 2025 EA was adopted, the Department of  
25 the Interior has substantively revised its NEPA regulations and procedures. 90  
26 Fed. Reg. 29,498 (July 3, 2025); *see Native Vill. of Nuiqsut*, 9 F.4th at 1211 (new  
regulations governing level of required NEPA review “render the case [challenging  
prior NEPA review] moot because there is no ‘reasonable expectation that the  
plaintiffs will be subjected to the challenged action again’”)(citation omitted).  
27 The significant changes in the NEPA regulatory landscape since Plaintiffs filed the  
Amended Complaint in January 2025 is further evidence that Plaintiffs’  
“complaints are stale,” *see Aluminum Co. of Am. v. Adm’r, Bonneville Power  
Admin.*, 175 F.3d 1156, 1163 (9th Cir. 1999).

1 Plaintiffs attempt to analogize BSEE’s subsequent actions to those taken by  
2 agencies that made an “irreversible and irretrievable commitment of resources”  
3 before “prepar[ing] a NEPA document[].” *See Metcalf v. Daley*, 214 F.3d 1135,  
4 1143 (9th Cir. 2000); Supp. Br. at 2-6. But here, the decision to allow oil  
5 production in the SYU was made decades ago, after multiple rounds of  
6 environmental review. Here, the status quo is a permitted, fully constructed oil-  
7 and-gas operation that operated for decades, which is permitted to operate now.  
8 Dkt. 76-1 at 3-5; Dkt. 80 at 3-4. The extension of time to resume operations was  
9 not an “irreversible and irretrievable commitment of resources”—that occurred  
10 when the project Development and Production Plans were approved after  
11 environmental review decades ago. Dkt. 76-1 at 12-14; Dkt. 80 at 3-4. *Cf. Norton*  
12 *v. S. Utah Wilderness All.*, 542 U.S. 55, 72 (2004) (no ongoing major federal  
13 action); *see* 43 U.S.C. § 1351(e)(1) (“At least once the Secretary shall declare the  
14 approval of a development and production plan in any area . . . to be a major  
15 federal action.”); *Vill. of False Pass v. Clark*, 733 F.2d 605, 609 (9th Cir. 1984)  
16 (“OCSLA’s specific references to NEPA at the leasing and development and  
17 production stages . . . emphasize the discrete nature of each stage.”).

18 As explained in Sable’s Reply Brief, *Pit River Tribe v. U.S. Forest Serv.*,  
19 469 F.3d 768 (9th Cir. 2006), and *Metcalf v. Daley*, 214 F.3d 1135 (9th Cir. 2000),  
20 are inapposite as those agencies failed to conduct *any* environmental review prior  
21 to taking the challenged action. *See* Dkt. 80 at 2-3. The same is true in *Save the*  
22 *Yaak Comm. v. Block*, 840 F.2d 714, 716, 718 (9th Cir. 1988) where firm  
23 commitments were entered into and construction began before any NEPA review  
24 was conducted. Plaintiffs claim “this is a distinction without a difference,” Supp.  
25 Br. at 5, when this distinction is actually dispositive. As the central inquiry in  
26 these cases was whether the agency “engage[d] the NEPA process ‘at the earliest  
27 possible time,’ *see Metcalf*, 214 F.3d at 1143, Plaintiffs cannot simply ignore that  
28

1 BSEE engaged the NEPA process prior to the 2023 Extension, via CatEx<sup>5</sup>, and  
2 prior to production at the SYU, via robust EISs. Dkt. 76-1 at 3-5, 6; Dkt. 80 at 3-4.

3 Moreover, in *Metcalf, Pit River* and *Save the Yaak* (and unlike here), the  
4 plaintiffs directly challenged environmental documents as untimely and there was  
5 therefore an administrative record upon which the court could examine whether the  
6 documents were “slanted” or untimely. *See Pit River*, 469 F.3d at 785 (“the EIS  
7 was completed before the beginning of this litigation”); *Metcalf*, 214 F.3d at 1140  
8 (complaint filed “the same day as the release of the FONSI”); *Vance v. Block*, 635  
9 F. Supp. 163, 166 (D. Mont. 1986) (agency’s “final decision” and “the associated  
10 FONSI, announced one year prior to suit being filed”), *rev’d in part sub nom. Save*  
11 *the Yaak Comm.*, 840 F.2d 714. In contrast, the Amended Complaint does not  
12 reference the EA/FONSI or 2025 Decision and there is no administrative record on  
13 which the Court could examine whether BSEE’s actions were “slanted” or  
14 otherwise improper under NEPA and the Outer Continental Shelf Lands Act  
15 (“OCSLA”) (which they were not). *See* Section II.A, *supra*. Plus, there is no  
16 dispute that BSEE conducted NEPA review of the 2023 Extension and APMs via  
17 CatEx *before* making a decision. And, unlike those cases, there is no binding  
18 agreement with the government to approve the extension of time to begin  
19 operations, or irreversible or irretrievable commitment of resources in light of the  
20 Unit Agreement and approved Development and Production Plans.

21 Plaintiffs also argue that BSEE’s “process here was fatally flawed,” because  
22 BSEE did not “withdraw[] the offending decision or preserv[e] the status quo” and  
23 “restart” and the issuance of APMs “could only occur because of the 2023 decision

24 <sup>5</sup> While Plaintiffs acknowledge that “BSEE did a categorical exclusion review for  
25 its lease extensions,” they argue “that analysis assumed production would remain  
26 shut down” and therefore failed to consider the effects of restarting production.  
27 Supp. Br. at 5-6. But this assumption was correct, as production did not restart  
28 during the lease extension. Dkt. 76-1 at 14. Plaintiffs also claim reliance on the  
CatEx meant there was no analysis of alternatives. Supp. Br. at 6. But an  
alternatives analysis is not required for a CatEx. *See Ctr. for Biological Diversity*  
*v. Salazar*, 706 F.3d 1085, 1097 (9th Cir. 2013). In any case, BSEE ultimately did  
provide this analysis in the superseding EA/FONSI. *See* Dkt. 76-3 at 25-38.

1 to extend the leases, without which Sable’s ability to develop the Santa Ynez Unit  
2 would have expired.” Supp. Br. at 4-5. First, withdrawing the 2023 Extension is  
3 not a legal requirement prior to issuing a new decision, and, second, Plaintiffs’  
4 premise that the leases would expire is factually incorrect as the Unit Agreement  
5 independently maintained the leases, and the 2023 Extension merely preserved the  
6 status quo. *See* Dkt. 76-1 at 2-3, 11, 12; Dkt. 80 at 3. And even vacatur of the  
7 2023 Extension would not terminate the leases or otherwise deprive Sable of its  
8 existing and ongoing rights to produce. *See Pit River Tribe v. U.S. Forest Serv.*,  
9 615 F.3d 1069, 1080 (9th Cir. 2010) (“[W]e hold that a successful challenge to a  
10 lease extension results only in the undoing of the extension. The agency may  
11 properly reconsider its decision to extend the leases.”).

12 *Citizens Advisory Comm. on Private Prisons, Inc. v. U.S. Department of*  
13 *Justice*, 197 F. Supp. 2d 226, 250 (W.D. Pa. 2001), *aff’d*, 33 F. App’x 36 (3d Cir.  
14 2002), is inapposite for different reasons than Plaintiffs state. *See* Supp. Br. at 6.  
15 In *Citizens*, a case involving the contracting for and construction of a new prison  
16 on a wooded undeveloped area prior to NEPA review, the district court recognized  
17 an agency may “cure” its NEPA violations. It stated that, with respect to  
18 subsequently undertaken NEPA review, “[a]t a minimum, the Administrative  
19 Record must show that the agency made a good faith and objective effort to  
20 evaluate the relevant environmental criteria.” *Citizens*, 197 F. Supp. 2d at 250.  
21 While the court in *Citizens* concluded the agency “did undertake the kind of  
22 objective and good faith analysis that NEPA requires,” that conclusion came only  
23 after the court “scrutinize[d] the Administrative Record.” *Id.* at 252. Again,  
24 because there is no administrative record to “scrutinize,” there is no basis for the  
25 Court to evaluate BSEE’s “good faith.” *See* Section II.A, *supra*.

26 Plaintiffs argue BSEE “has done nothing” to show that it acted “objectively  
27 or in good faith”. Supp. Br. at 7. But, as noted above, BSEE was under no legal  
28 obligation to “suspend operations” that were long ago approved while it conducted

1 additional NEPA review. That BSEE “permitted additional activity” is also not  
2 evidence of bad faith. In fact, the only new approvals that BSEE issued after  
3 Plaintiffs filed their Amended Complaint were APMs that expressly relied on the  
4 new EA/FONSI, well after that analysis was completed. *See supra* note 4. Finally,  
5 there is nothing in NEPA or the Department of the Interior’s then-existing NEPA  
6 regulations that required public comment on the 2025 EA issued by BSEE.<sup>6</sup> In  
7 contrast to *Citizens*, Ninth Circuit law is clear: “courts cannot assume that because  
8 an agency has failed to comply with NEPA in the past, it will fail to do so in the  
9 future.” *See, e.g., Pac. Rivers Council*, 942 F. Supp. 2d at 1023; *Penfold*, 857 F.2d  
10 at 1319.

11           *Beverly Hills Unified School District v. Federal Transit Administration*, No.  
12 CV 12-9861-GW(SSX), 2016 WL 4650428, at \*88 (C.D. Cal. Feb. 1, 2016),  
13 demonstrates that a pre-existing generalized preference that is reflected in NEPA  
14 analysis is not disqualifying evidence of a lack of good faith. There, the court  
15 found, after extensively reviewing the administrative record, that the agency’s  
16 environmental review was not “predetermined,” even when evidence in the record  
17 showed that one subway station “location was preferred early on and that  
18 subsequent analysis favored that preference.” *Id.* at \*89. Unlike *Beverly Hills*,  
19 however, because Plaintiffs have not challenged the EA and 2025 Decision, there  
20 is no record of BSEE’s actions related to these decisions and thus no basis for the  
21 Court to determine whether these approvals were predetermined (which they were  
22 not). *See* Section II.A, *supra*.

23  
24 \_\_\_\_\_  
25       <sup>6</sup> “[T]he circulation of a draft EA is not required in every case.” *Bering Strait*  
26       *Citizens for Responsible Res. Dev. v. U.S. Army Corps of Eng’rs*, 524 F.3d 938,  
27       952 (9th Cir. 2008). Recognizing that “the regulations governing public  
28       involvement in the preparation of EAs are general in approach,” the Ninth Circuit  
attempted to standardize public involvement for an EA tied to the Council on  
Environmental Quality (“CEQ”) regulations. *See Bering Strait*, 524 F.3d at 952-  
53. But when the EA/FONSI here was released, the CEQ NEPA-implementing  
regulations had been rescinded. 90 Fed. Reg. 10,610 (Feb. 25, 2025). Therefore,  
any suggestion that BSEE was required to circulate a draft EA is incorrect.

1 Plaintiffs do not grapple with the key holding of *Greater Yellowstone*, which  
2 is that “no live controversy” existed where plaintiffs sought to “compel the Forest  
3 Service to undertake environmental analyses” of elk feedgrounds and the agency  
4 “did exactly this” in subsequent NEPA analysis. 572 F.3d at 1121. Instead, they  
5 argue that, unlike in *Greater Yellowstone*, Plaintiffs “also seek[] declaratory relief,  
6 vacatur, and an order that the agency issue new analyses.” Supp. Br. at 7. This is  
7 irrelevant. Plaintiffs seek declaratory relief and vacatur regarding actions that have  
8 been superseded by the 2025 EA/FONSI and Decision and thus are no longer  
9 operative, meaning the Court cannot grant meaningful relief with respect to these  
10 actions, just as in *Greater Yellowstone*. Dkt. 76-1 at 7-12.

11 Plaintiffs’ attempt to distinguish *Charter Township of Huron, Michigan v.*  
12 *Richards*, 997 F.2d 1168 (6th Cir. 1993), because the agency subsequently  
13 prepared an EIS that was subject to public comment and not an EA, is unavailing.  
14 See Supp. Br. at 9. BSEE’s decision not to prepare an EIS after completing the EA  
15 was entirely within its discretion. See *Kern v. U.S. Bureau of Land Mgmt.*, 284  
16 F.3d 1062, 1070 (9th Cir. 2002). If Plaintiffs believe BSEE abused that discretion  
17 with respect to the 2025 EA, they must actually raise this claim. See Section II.A,  
18 *supra*. Furthermore, the Sixth Circuit’s conclusion that a NEPA case is moot  
19 where it “would be foolish” to “order a party to do that which it has already done,”  
20 see *Charter Township*, 997 F.2d at 1175, supports summary judgment in favor of  
21 Sable, consistent with Ninth Circuit precedent discussed above, which has  
22 routinely held that NEPA challenges to superseded agency actions are moot.

23 **C. Plaintiffs’ Claims Are Moot**

24 Because they are outside Plaintiffs’ Amended Complaint, the 2025 Decision  
25 and EA are relevant to this case only for the purpose of determining whether an  
26 actual or live controversy exists, or whether Plaintiffs’ First, Second, and Fourth  
27 Claims are moot. They are each moot. See Dkt. 76-1 at 8-12; Dkt. 80 at 1-5.  
28

1 Plaintiffs' First Claim alleges that BSEE's 2023 Extension was unlawful  
2 because it considered "only the supposed benefits of resuming oil and gas  
3 production at the Santa Ynez Unit" and "ignored all the negative impacts of  
4 resuming offshore oil drilling at the Unit," like the risk of a potential spill. Am.  
5 Compl. ¶¶ 148-52. But in the 2025 Decision, "BSEE has . . . evaluated the  
6 associated risks of future production, including the risk of an oil spill." Dkt. 76-4  
7 at 92. The 2025 Decision considers a "worst case" oil discharge, addresses  
8 Plaintiffs' concerns over the age of the SYU's infrastructure, and relies on the new  
9 EA's analysis of other environmental considerations like air quality, GHG lifecycle  
10 emissions, fish and essential fish habitat, accidental oil spills, water quality, and  
11 impacts to protected species. *Id.* at 92-96. And, the new EA specifically evaluates  
12 and responds to Plaintiffs' February 2023 letter to BSEE. *See id.* at 87; Dkt. 76-3  
13 at 18-19; Am. Compl. ¶ 112. Because the 2025 Decision addresses Plaintiffs' First  
14 Claim, no actual or live controversy remains. Dkt. 76-1 at 9.

15 In their Second Claim, Plaintiffs allege that BSEE unlawfully used a CatEx  
16 when approving the 2023 Extension. *See Am. Compl. ¶¶ 154-61; Mot. at 11-14.*  
17 But for the 2025 Decision, which reaffirmed the 2023 Extension, BSEE did not  
18 rely on a CatEx and instead prepared a detailed EA analyzing the potential  
19 environmental impacts of BSEE's decision to "either approve or deny a lease  
20 extension request for leases in the SYU." Dkt. 76-3 at 5. Accordingly, Plaintiffs  
21 have received their requested relief: that a CatEx not be relied upon to support the  
22 2023 Extension, *see Am. Compl., Request for Relief at 48-49*, and thus no live  
23 controversy remains. Dkt. 76-1 at 10.

24 In their Third Claim, Plaintiffs allege that BSEE unlawfully relied on CatExs  
25 to approve APMs for two wells. *See Am. Compl. ¶¶ 162-170; Mot. at 15-20.* As  
26 previously explained, Plaintiffs Third Claim is mooted—*independent of the*  
27 EA/FONSI—by the fact that this well reworking activity deep underground has  
28 already been completed; the Court "can grant no relief that would 'undo' the

1 operation.” *Aluminum Co.*, 175 F.3d at 1163; Dkt. 80 at 4. But to the extent  
2 Plaintiffs seek to “[p]rohibit BSEE from authorizing additional . . . APMs for  
3 development and production . . . unless and until it complies with OCSLA, NEPA,  
4 and the APA,” *see* Am. Compl., Request for Relief at 49, BSEE has done so via a  
5 new EA of the potential environmental impacts of restarting production at SYU.<sup>7</sup>

6 Plaintiffs’ Fourth Claim alleges that BSEE violated NEPA by relying on  
7 EIS’s prepared in 1975 and 1984. *See* Am. Compl. ¶¶ 171-178; Mot. at 23. The  
8 new EA/FONSI addresses Plaintiffs’ concerns. *See* Dkt. 76-3 at 26-27 (required  
9 regulatory and structural integrity inspections of the SYU infrastructure); *id.* at 17  
10 (“no indication that age of SYU infrastructure contributed to the 2015 oil spill or  
11 has contributed to recent oil spills in the region”); *id.* at 25 (Alternative A analyzed  
12 in EA/FONSI assumes permitting time to “fully return SYU to production”); *id.* at  
13 29-33 and Appendix A (potential for oil spills); *id.* at 39-42 (greenhouse gas  
14 lifecycle emissions); *id.* at 8-9 (mitigation measures); *id.* at 37-38 (“no action” and  
15 denial of lease extension alternatives); *id.* at 45-59 (impacts on fish, marine  
16 mammals, sea turtles, birds, and other threatened and endangered species and  
17 habitat); *id.* at 34 (impacts to Chumash Heritage National Marine Sanctuary); *see also*  
18 Dkt. 76-4. Because BSEE addressed all of Plaintiffs’ concerns by completing  
19 additional “NEPA analysis by a date certain,” *see* Am. Compl., Request for Relief  
20 at 49, there remains no live controversy, and Plaintiffs’ claims are moot. *See*  
21 *Charter Township*, 997 F.2d at 1175; Dkt. 76-1 at 10.

22 **III. CONCLUSION**

23 Sable respectfully requests that Plaintiffs’ Motion for Summary for  
24 Judgment be denied and Sable’s Cross-Motion for Summary Judgment be granted.

25

26

27 <sup>7</sup> BSEE’s approval of nine APMs demonstrates that Plaintiffs’ claim is not capable  
28 of repetition as there is no evidence that BSEE will rely on categorical exclusions  
for any future routine APMs given the 2025 EA/FONSI. *See supra* note 4.

1 Dated: August 8, 2025

Respectfully submitted,

2  
3 LATHAM & WATKINS LLP

4 By: /s/ Daniel P. Brunton

5 Daniel P. Brunton (Bar No. 218615)  
6 Email: daniel.brunton@lw.com  
7 12670 High Bluff Drive  
8 San Diego, CA 92130  
9 Tel.: (858) 523-5400  
10 Fax: (858) 523-5450

11 Michael G. Romey (Bar No. 137993)  
12 Email: michael.romey@lw.com  
13 355 South Grand Avenue, Suite 100  
14 Los Angeles, CA 90071-1560  
15 Tel.: (213) 485-1234  
16 Fax: (213) 891-8763

17 Janice M. Schneider  
18 (*Pro Hac Vice*)  
19 Email: janice.schneider@lw.com  
20 Devin M. O'Connor  
21 (*Pro Hac Vice*)  
22 Email: devin.o'connor@lw.com  
23 555 Eleventh Street, NW, Suite 1000  
24 Washington, D.C. 20004-1304  
25 Tel.: (202) 637-2200  
26 Fax: (202) 637-2201

27 *Attorneys for Intervenor-Defendant*  
28 *Sable Offshore Corp.*

## **CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Intervenor-Defendant Sable Offshore Corp., certifies that this brief contains 12 pages, which complies with the page limit set by the Court's Standing Order (ECF No. 34).

Dated: August 8, 2025

By: /s/ Daniel P. Brunton  
Daniel P. Brunton (Bar No. 218615)